

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 06-377 (DSD/JSM)

United States of America,

Plaintiff,

v.

**ORDER**

Jamie Schmidt,

Defendant.

This matter is before the court on defendant's objection to Magistrate Judge Janie S. Mayeron's report and recommendation, dated March 12, 2007. In her report, the magistrate judge recommended that defendant Jamie Schmidt's motion to suppress statements be denied. Following a de novo review of the file and record, 28 U.S.C. § 636(b)(1)(C), the court adopts the report and recommendation of the magistrate judge.

A defendant is entitled to a Miranda warning prior to custodial interrogation. Miranda v. Arizona, 384 U.S. 436, 444-45 (1966). To determine whether an individual is in custody, the court considers the totality of the circumstances in light of the six "indicia of custody" set forth in United States v. Griffin, 922 F.2d 1343, 1347 (8th Cir. 1990). Following a suppression hearing, the magistrate judge considered the testimony of Special Agent Terrence Horenburg and a recording of a phone call between defendant and Shelton Pike and found that defendant was not in

custody on August 10, 2006, when she was interviewed by Special Agent Horenburg and others.

The magistrate judge made this finding based upon the following facts: defendant was initially informed that she did not have to talk to the officers, she was not under arrest and she would not be arrested regardless of what she said; defendant was not restrained in any manner during the interview; defendant voluntarily agreed to the interview and willingly answered all questions; the interview occurred in her apartment and defendant moved freely around the apartment, offering the officers food and drink and taking phone calls; there was no evidence of strong-arm tactics or deception by the officers and defendant was not arrested following the interview. The court finds that the report and recommendation of the magistrate judge is well reasoned and correctly applies the principles enunciated in United States v. Griffin to the facts of this case. Accordingly, after conducting a de novo review of the file and record, the court adopts the report and recommendation of the magistrate judge [Docket No. 27] in its entirety.

Therefore, **IT IS HEREBY ORDERED** that defendant's motion to suppress statements, admissions and answers [Docket No. 14] is denied.

Dated: April 6, 2007

s/David S. Doty  
David S. Doty, Judge  
United States District Court